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NOTIFICATION.

No. LD. (b) 3-2052/54/Law. *29th July 1955.*

The following Act of the Travancore-Cochin Legislature received the assent of the President and is hereby published for general information.

By order of His Highness
the Rajpramukh,

N. S. RADHAKRISHNA SARMA,
Secretary to Government.

Government Secretariat,
Law Department,
Trivandrum.

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ACT XVIII OF 1955.

THE TRAVANCORE-COCHIN GENERAL SALES TAX (AMENDMENT) ACT, 1955.

An Act further to amend the Travancore-Cochin General Sales Tax Act, 1125.

Preamble. Whereas it is expedient further to amend the Travancore-Cochin General Sales Tax Act, 1125, for the purposes hereinafter appearing;

Be it enacted in the Sixth Year of the Republic of India as follows:—

1. *Short title and commencement.* (1) This Act may be called the Travancore-Cochin General Sales Tax (Amendment) Act, 1955.

(2) It shall come into force on such date (hereinafter referred to as "the appointed day") as the Government may, by notification in the Gazette, appoint.

2. *Amendment of Section 2, Act XI of 1125.* In Section 2 of the Travancore-Cochin General Sales Tax Act, 1125 (Act XI of 1125), hereinafter referred to as the said Act,—

(i) after clause (a), the following clause shall be inserted, namely:—

"(aa) "Appellate Tribunal" means the Tribunal appointed under Section 2A;";

(ii) after clause (c), the following clause shall be inserted namely:—

"(cc) "Deputy Commissioner" means any person appointed to be a Deputy Commissioner of Sales Tax under Section 2B;".

3. *Insertion of new Sections 2A and 2B in Act XI of 1125.* After Section 2 of the said Act, the following sections shall be inserted namely:—

"2A. *Appellate Tribunal.* (1) The Government shall appoint an Appellate Tribunal consisting of three members to exercise the functions conferred on the Appellate Tribunal by or under this Act. Of the three members one shall be a judicial officer not below the rank of Additional District Judge. He shall be the Chairman of the Tribunal. The other two members shall possess such qualifications as may be prescribed.

(2) Any vacancy in the office of a member of the Appellate Tribunal shall be filled up by the Government.

(3) (a) The functions of the Appellate Tribunal may be exercised by a Bench consisting of all the members of the Tribunal or by a Bench consisting of two members constituted by

the Chairman or, in the event of the office of a member other than the Chairman being vacant, by a Bench consisting of the Chairman and the other member :

Provided that, if any case which comes up before a Bench (of which the Chairman is not a member) involves a question of law, the Bench may, in its discretion, reserve such case for decision by a Bench to be constituted under this clause of which the Chairman shall be a member.

(b) Where an appeal or application is heard by a Bench consisting of all the three members of the Tribunal and the members differ in opinion on any point, the point shall be decided in accordance with the opinion of the majority.

(c) Where an appeal or application is heard by a Bench consisting of two members, and the members are divided in their opinion on any point, they shall state the point upon which they differ, and the appeal or application shall then be heard upon that point only by the third member, and such point shall be decided according to the opinion of this third member.

(4) The Appellate Tribunal shall, with the previous sanction of the Government, make regulations, consistent with the provisions of this Act and the rules made thereunder, for regulating its procedure and the disposal of its business.

(5) The regulations made under sub-section (4) shall be published in the Gazette.

2B. *Appointment of Deputy Commissioner of Sales Tax.* The Government may appoint a Deputy Commissioner of Sales Tax for the purpose of performing the functions conferred on him by or under this Act."

4. *Amendment of Section 3, Act XI of 1125.* In Section 3 of the said Act,

(i) for clause (b) of sub-section (1), the following clause shall be substituted, namely :—

"(b) the tax shall be calculated at the rate of six pies for every Rupee in the turnover relating to turmeric, nuxvomica, kacholam, arecanut, tamarind, laurel oil, coconut and copra and at the rate of three pies for every Rupee in the turnover relating to other goods.";

(ii) in sub-section (2)—

(a) items (i) to (ix) shall be renumbered as items (iii) to (xi) respectively; and before item (iii) as so renumbered, the following shall be inserted as items (i) and (ii), namely :—

"(i) Mill cloth (whether of silk, artificial silk, wool, flax, or any other material), which is not made wholly of cotton and in which the count of warp yarn employed (excluding the border) is 17s. or finer (whether single or folded)	One anna three pies
(ii) Cotton cloth made in mills, in which the count of warp yarn employed (excluding the border) is 35s or finer (whether single or folded)	One anna three pies"

(b) for item (ii) renumbered as item (iv), the following item shall be substituted, namely:—

"(iv) Refrigerators; air conditioning plants; component parts of refrigerators or air conditioning plants	Six pies";

(c) in item (iii) (b), renumbered as item (v) (b), after the words "Radio-gramophones" the words "component parts of radio-gramophones" shall be added.

5. *Amendment of Section 4, Act XI of 1125.* In Section 4 of the said Act, the words and figure "of Section 3" shall be omitted.

6. *Amendment of Section 5, Act XI of 1125.* In Section 5 of the said Act,—

(i) for clause (iii), the following clause shall be substituted, namely:—

"(iii) the sale of any cloth woven on handlooms wholly or partly with mill yarn shall be exempt from taxation under Section 3, sub-section (1);";

(ii) in clause (v), the words "and of newspapers that is to say, of periodical works containing public news or comments on public news" shall be omitted; and

(iii) after clause (vi), the following clause shall be inserted, namely:—

"(vii) the sale of pepper, ginger, turmeric, nuxvomica, kacholam, lemongrass oil, arecanut, tamarind, laurel oil, cocoanut and copra shall be liable to tax under Section 3, sub-section (1), only at such single point in the series of sales by successive dealers as may be prescribed".

7. *Amendment of Section 9, Act XI of 1125.* In Section 9 of the said Act, in the second proviso, the word "legitimate" and the words "actually incurred by him and specified in the accounts" shall be omitted, and the words "which are specified in the accounts and which the assessing authority considers legitimate" shall be added at the end.

8. *Insertion of new Section 11A, in Act XI of 1125.* After Section 11 of the said Act, the following section shall be inserted, namely :—

"11A. *Government etc., entitled to collect tax as registered dealers.* (1) Notwithstanding anything contained in this Act, the Government, the Council of the Corporation of the City of Trivandrum and the Municipal Councils constituted under the law relating to municipalities for the time being in force shall, in respect of any sale of geeds effected by them, be entitled to cellect by way of tax any amount which a registered dealer effecting such sale would have been entitled to collect by way of tax under this Act.

(2) The Council of the Corporation of the City of Trivandrum and every Municipal Council which collects any amount by way of tax under sub-section (1), shall pay over to the Government the amount so cellected and if any such amount is not so paid the Cellector shall, on requisition by the assessing authority, make an order directing the person having the custody of the municipal fund to pay it in priority to any other charge against such fund except charges for the service of authorised loans, and such persen shall be beund to comply with such order."

9. *Amendment of Section 14, Act XI of 1125.* In Section 14 of the said Act,—

(i) in sub-section (1)—

(a) after the words "assessment made on him", the words, figures and brackets "under Section 12, sub-section (2)", shall be inserted ;

(b) in the proviso, after the word "provided", the word "further" shall be inserted ;

(c) before the proviso the following proviso, shall be inserted, namely :—

"Previded that the appellate authority may admit an appeal preferred after the period of thirty days aforesaid, if the autherity is satisfied that the assessee had sufficient cause for net preferring the appeal within that period :" ;

(ii) in sub-section (4), for the words and figures "subject to the powers ef revision conferred by Section 15", the words, figures and letter "subject to the provisions of Sections 15 to 15 C" shall be substituted.

10. *Substitution of new sections for Section 15, Act XI of 1125.* For Section 15 of the said Act, the follewing sections shall be substituted, namely:—

"15. *Authorities competent to pass orders in revision.* (1) The Deputy Commissioner may—

(i) *suo motu*, or

(ii) on application,

call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit:

Provided that the Deputy Commissioner shall not revise any order or proceeding under this sub-section if—

(a) where an appeal against the order or proceeding lies to the Appellate Tribunal, the time within which such appeal may be made has not expired; or

(b) the order or proceeding has been made the subject of an appeal to the Appellate Tribunal.

(2) The Board of Revenue may—

(i) *suo motu*, or

(ii) in respect of any order passed or proceeding recorded by the Deputy Commissioner under sub-section (1) or any other provision of this Act, on application,

call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to it, for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as it thinks fit:

Provided that the Board of Revenue shall not revise any order or proceeding under this sub-section if—

(a) where an appeal against the order or proceeding lies to the Appellate Tribunal, the time within which such appeal may be made has not expired ; or

(b) the order or proceeding has been made the subject of an appeal to the Appellate Tribunal.

(3) In relation to an order of assessment passed under this Act, the power of the Deputy Commissioner under Clause (i) of sub-section (1) and that of the Board of Revenue under Clause (i) of sub-section (2) shall be exercisable only within a period of four years from the date on which the order was communicated to the assessee.

(4) Every application under sub-section (1) (ii) or (2) (ii) shall be preferred within sixty days from the date on which the order or proceeding to which the application relates was communicated to the applicant:

Provided that the authority concerned may admit an application preferred after the period of sixty days aforesaid, if the authority is satisfied that the applicant had sufficient cause for not preferring the application within that period.

(5) No order shall be passed under sub-section (1) or (2) enhancing any assessment, unless an opportunity has been given to the assessee to show cause against the proposed enhancement.

15A. *Appeal to Appellate Tribunal.* (1) Any assessee objecting to an order relating to assessment passed—

(i) by the appellate authority under Section 14, or

(ii) by the Deputy Commissioner *suo motu* under Section 15, sub-section (1),

may, if the assessee has not preferred an application for revision of the order under Section 15, sub-section (1), or under sub-section (2) of that section, as the case may be, appeal to the Appellate Tribunal within sixty days from the date on which the order was communicated to the assessee.

(2) The Appellate Tribunal may admit an appeal preferred after the period of sixty days referred to in sub-section (1), if it is satisfied that the assessee had sufficient cause for not preferring the appeal within that period.

(3) The appeal shall be in the prescribed form, shall be verified in the prescribed manner, and shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed.

(4) The Appellate Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, pass such order thereon as it thinks fit.

(5) Notwithstanding that an appeal has been preferred under sub-section (1), tax shall be paid in accordance with the assessment made in the case:

Provided that the Appellate Tribunal may, in its discretion, permit the appellant to pay the tax in such number of instalments, or give such other direction in regard to the payment of the tax, as it thinks fit:

Provided further that if as a result of the appeal any change becomes necessary in such assessment, the Appellate Tribunal may authorise the assessing authority to amend the assessment, and on such amendment being made, the amount overpaid by the assessee shall be refunded to him without interest, or the further amount of the tax due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(6) (a) The Appellate Tribunal may, on the application either of the assessee or the Deputy Commissioner, review any order passed by it under sub-section (4) on the basis of facts which were not before it when it passed the order:

Provided that no such application shall be preferred more than once in respect of the same order.

(b) The application for review shall be preferred in the prescribed manner and within one year from the date on which

the order to which the application relates was communicated to the applicant; and where the application is preferred by the assessee, it shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed.

(7) Every order passed by the Appellate Tribunal under sub-section (4) or sub-section (6) shall be communicated by it to the assessee, the authority from whose order the appeal was preferred, the Deputy Commissioner, if he is not such authority, and the Board of Revenue.

(8) Every order passed by the Appellate Tribunal under sub-section (4) shall, subject to the provisions of sub-section (6) and Section 15B, be final; and every order passed by it under sub-section (6) shall, subject to the provisions of Section 15B, be final.

15B. *Revision by High Court.* (1) Within sixty days from the date on which an order under Section 15A, sub-section (4) or sub-section (6), was communicated to him, the assessee or the Deputy Commissioner may prefer a petition to the High Court against the order on the ground that the Appellate Tribunal has either decided erroneously, or failed to decide, any question of law:

Provided that the High Court may admit a petition preferred after the period of sixty days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period.

(2) The petition shall be in the prescribed form, shall be verified in the prescribed manner, and shall, where it is preferred by the assessee, be accompanied by a fee of one hundred rupees.

(3) If the High Court, on perusing the petition, considers that there is no sufficient ground for interfering, it may dismiss the petition summarily:

Provided that no petition shall be dismissed unless the petitioner had a reasonable opportunity of being heard in support thereof.

(4) (*a*) If the High Court does not dismiss the petition summarily, it shall, after giving both parties to the petition a reasonable opportunity of being heard, determine the question or questions of law raised and either reverse, affirm or amend the order against which the petition was preferred or remit the matter to the Appellate Tribunal with the opinion of the High Court on the question or questions of law raised or pass such other order in relation to the matter as the High Court thinks fit.

(*b*) Where the High Court remits the matter to the Appellate Tribunal under clause (a) with its opinion on the question or questions of law raised, the latter shall amend the order passed by it in conformity with such opinion.

(5) Before passing an order under sub-section (4), the High Court may, if it considers it necessary so to do, remit the petition to the Appellate Tribunal and direct it to return the petition with its finding on any specific question or issue.

(6) Notwithstanding that a petition has been preferred under sub-section (1), tax shall be paid in accordance with the assessment made in the case:

Provided that the High Court may, in its discretion, permit the petitioner to pay the tax in such number of instalments, or give such other direction in regard to the payment of the tax, as it thinks fit:

Provided further that if as a result of the petition any change becomes necessary in such assessment, the High Court may authorise the assessing authority to amend the assessment, and on such amendment being made, the amount overpaid by the assessee shall be refunded to him without interest, or the further amount of tax due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(7) (a) The High Court may, on the application either of the assessee or of the Deputy Commissioner, review any order passed by it under sub-section (4) on the basis of facts which were not before it when it passed the order.

(b) The application for review shall be preferred within such time, and in such manner as may be prescribed, and shall, where it is preferred by the assessee, be accompanied by a fee of one hundred rupees.

(8) In respect of every petition or application preferred under sub-section (1) or sub-section (7), the costs shall be in the discretion of the High Court.

15C. *Appeal to the High Court.* (1) Any assessee objecting to an order relating to assessment passed by the Board of Revenue *suo motu* under Section 15, sub-section (2), may appeal to the High Court within sixty days from the date on which the order was communicated to him:

Provided that the High Court may admit an appeal preferred after the period of sixty days aforesaid if it is satisfied that the assessee had sufficient cause for not preferring the appeal within that period.

(2) The appeal shall be in the prescribed form, shall be verified in the prescribed manner, and shall be accompanied by a fee of one hundred rupees.

(3) The High Court shall, after giving both parties to the appeal a reasonable opportunity of being heard, pass such order thereon as it thinks fit.

(4) The provisions of Section 15B, sub-sections (6) to (8), shall apply in relation to appeals preferred under sub-section (1) as they apply in relation to petitions preferred under Section 15B, sub-section (1).

15D. *Petitions, applications and appeals to High Court to be heard by a Bench of not less than two Judges.* Every petition, application or appeal preferred to the High Court under Sections 15B and 15C shall be heard by a Bench of not less than two Judges, and in respect of such petition, application or appeal, the provisions of Section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply."

11. *Amendment of Section 17, Act XI of 1125.* In Section 17 of the said Act—

(i) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) If any officer not below the rank of assessing authority has reason to suspect that any dealer is attempting to evade the payment of any tax or fee due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers, or documents of the dealer as may be necessary, and shall grant a receipt for the same. The Officer who seizes such accounts, registers or documents shall return them within ten days from the date of seizure unless they are required for a prosecution";

(ii) in sub-section (3), for the word, figure and brackets "sub-section (2)," the words, figures and brackets "sub-section (2) or (2A)" shall be substituted.

12. *Insertion of new Section 23A in Act XI of 1125.* After Section 23 of the said Act, the following section shall be inserted, namely:—

"23A. *Courts not to set aside or modify assessments except as provided in this Act.* No suit or other proceeding shall, except as expressly provided in this Act, be instituted in any court to set aside or modify any assessment made under this Act."

13. *Amendment of Section 24, Act XI of 1125.* In Section 24 of the said Act, in sub-section (2), after clause (j), the following clauses shall be inserted, namely:—

"(jj) the term of office, and the conditions of service, of the members of the Appellate Tribunal;

"(jjj) the circumstances in which, and the extent to which fees paid in pursuance of Section 15A may be refunded;".

14. *Disposal of certain applications pending with the Board of Revenue or the Deputy Commissioner on the appointed day.* Notwithstanding anything contained in the said Act or in this Act, any application preferred under Section 15 of the said Act against an order of the appellate authority under Section 14 of that Act, and pending before the Board of Revenue, Commissioner or the Deputy Commissioner on the appointed day, shall, on the expiration of thirty days from that day, stand transferred to the Appellate Tribunal for disposal as if it were an

appeal preferred under, and in accordance with, the provisions of Section 15A of the said Act as amended by this Act :

Provided that if within the thirty days aforesaid, the applicant intimates in writing to the Board of Revenue or the Deputy Commissioner, as the case may be, that he does not desire the application to be disposed of by the Appellate Tribunal, the application shall be disposed of by the Deputy Commissioner as if it had been preferred to him under, and in accordance with, the provisions of Section 15, sub-section (1) of the said Act as amended by this Act.

15. *Institution of certain appeals and applications and the disposal thereof.* Notwithstanding anything contained in this Act, if on the appointed day, the period within which an application for revision could have been preferred to any authority competent to dispose of such application under Section 15 of the said Act, has not elapsed, an appeal may be preferred to the Appellate Tribunal within such period or an application for revision may be preferred, in the case of an order by the Deputy Commissioner, to the Board of Revenue and in the case of an order by the appellate authority, to the Deputy Commissioner within such period, and any such appeal or application may be disposed of as if it were an appeal or application preferred under Section 15 A, or Section 15 (2) (ii) or 15(1) (ii), as the case may be, of the said Act as amended by this Act.